
Globalisation, Transnational Legal Order and their Impact On Corruption

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Abstract

In recent years, corruption has become a global issue, with countries striving to combat its rapid spread. Governments have lost power due to corrupt practices, leading to changes in leadership in nations like Italy, South Korea, Mexico, Brazil, Colombia, South Africa, France, and India. Peaceful protests against corruption, particularly bribery, are occurring worldwide. While such protests are not new, corruption as a global political issue has gained recognition only in the last decade, necessitating a global response. International and non-governmental organizations like the United Nations, Organization of American States, International Chamber of Commerce, Transparency International, World Economic Forum, Interpol, and the Organization for Economic Cooperation and Development are addressing the issue. Efforts focus on curbing the rapid spread of corruption, an entrenched phenomenon in global politics. Many political parties rise to power with anti-corruption agendas but often become corrupt themselves. We are at a historical turning point with increased awareness and collective action against corruption.

INTRODUCTION

In the recent years the problem of corruption has traveled beyond countries and have become a global issue. In less than half a decade, the countries have been on a rage to solve the rapid spread of corruption around the world. The governments in many countries have lost their power due to their corrupt practices. The parties which were in power from a long time have lost their offices, had to leave their posts of presidents, prime ministers, parliamentarians. Countries like Italy, south Korea, Mexico, Brazil, Colombia, South Africa, France as well as India have faced such problems of corruption.

There are peaceful protests around the world against corruption. People are protesting against the world's oldest practice of giving and excepting bribes. The protests against corruption are not new. But corruption at this global level have been recognised only in the last decade. Now corruption have emerged as a global political issue which requires a global political response. There has been a rise of international organisation and non-governmental organisations who raises questions on such rapid growth of corruption. The international organisations like the "United Nations", the "Organization of American states", the "International Chamber of Commerce", the "Transparency International", the "World Economic Forum", "Interpol", and the most prevalent, the "Organization for Economic Cooperation and Development" are there trying to solve the problem of rising corruption.

The people as well as these organisations do not try to completely vanish corruption because it is an age-old phenomenon and deeply rooted in world politics. All the efforts are done to stop such speedy wide spreading corruption.

In many countries political parties rise to power because of their anti-corruption agendas but eventually those are the same parties that become corrupt themselves. It can be said that we are currently at the turning point of history where there is an increased awareness about corruption and people and nations are coming together against the corruption.

NATURE OF CORRUPTION AROUND THE WORLD

1) CORRUPTION AS A SOCIAL PHENOMENON AND AS A LEGAL CONSTRUCT

Corruption could be studied under two phenomenons. Firstly, as a social problem, which means corruptions that could be seen as a social practice. It means studying the corruption as real-life situations. Another phenomenon could be as a legal construct that involves looking at corruption as a illegal action or criminal activity. It means studying whatever is written about corruption in different laws.

The law defines both national and international corruption as something that is illegal or against the law. Such conducts include bribery in any forms, both private and public bribery will be considered as corruption. It also includes influencing for personal profits, abusing assigned functions, and stealing money. So, to be precise corruption is list of behaviours which are against law. In the “United Nations Convention against Corruption” and the “Council of Europe” both considers corruption as a criminal behaviour. But many scholars considers that corruption have a much broader meaning than of criminal behaviour. Some scholars consider collusive relationships, influences, and secret arrangements and corruption if though they are legal. Sometimes even immoral and unethical acts are considered as corruption. “Recent studies demonstrate that in the United Kingdom (UK) questionable practices that are perceived by the public as corrupt, such as revolving door appointments, are perfectly legal.”¹ Both the approaches of legal construct and social phenomenon works together while understanding the concept of corruption.

¹Lorenzo Pasculli and Nicholas Ryder, Corruption and globalisation: towards an interdisciplinary scientific understanding of corruption as a global crime, 2019

There is no standard legal definition of corruption, as all the nation have their own interpretation of the meaning of corruption. If we want to have a harmonised definition of corruption which is necessary in the globalising world we need to transcend from the local definitions.

2) CORRUPTION BEYOND ILLEGALITY

If corruption have to be seen from the lens of social phenomenon, its interpretation becomes wider than just illegal acts. It aims to include various unethical or immoral behaviour in itself even if they are legal. However, if the definition of corruption has to be wider, it would cover every and any kind of unethical behaviour which would make the concept of corruption completely useless. So, there is a need to identify a specific element which will help to qualify certain acts as corruption.

In the widest sense corruption could be considered as breach of integrity. But integrity in itself is a very wide concept. Integrity could mean where any organisation or government setup follows its own set of rules with honesty and values the system. Corruption in this sense would mean “deviation” from these rules and values. Corruption occurs when the powers, privileges or tools are used for personal use which is harmful to others or takes away their rights. The abusive element is what makes corruption different from unethical or immoral behaviour.

It is necessary to study the nature of corruption around the world’s it would help the policy makers to differentiate between what should be criminalised and what illegal while making laws against corruption.

THE IMPACT OF GLOBALISATION ON CORRUPTION

One of the outcomes of Globalisation is rising levels of corruptions worldwide. The greater interaction of the countries with each other have made them pay attention to the corrupt practices in the political, social and economic affairs of other countries.

Such interactions have given a platform to international organisations to raise their voices against these corrupt practices. These organisations call for the government to make promising anti-corruption policies and private organisation to have a more transparent trade and transactions.

Some scholars believe that rise in globalisation have increased the competitiveness in the world of commerce, services and trade which in result would increase the corrupt practices. The problem is worsened when it becomes difficult to detect corruption as people have switched to digital platforms to conduct their businesses and choose off shore financial institutions. The integrated world economy makes it easier for corruption to spill faster when the countries rely on the selling of raw materials internationally. Therefore, it can be said that corruption was present before the rise of globalisation, but globalisation have helped it grow and spread faster.

On the flip side there are scholars with an opinion that globalisation can in fact be a factor of reducing corruption. It is being argued that with the increasing communication and integration of trade and commerce, the institutions will be pressurised from their own employees as well as from other organisations to be accountable and transparent which will reduce the possibilities of corruption. For instance, India's economic liberalization measures have been associated with a decrease in corruption levels. According to Transparency International's Corruption Perceptions Index (CPI), India's score improved from 32 in 1995 to 40 in 2022.

This suggests that, over time, India has made some progress in combating corruption as its economy became more integrated into the global marketplace. In today's scenario powerful international organisations have contributed significantly towards the protest against corruption. The organisations make it mandatory for the countries to have a transparent cross border business and make stricter anti-corruption policies if they want to participate in the world economy.

The negative or positive growth of corruption depends on how globalised the country is. Globalisation can affect the growth of corruption in both negative and positive way. The higher level of corruption is seen in the developing countries like India, as they are aiming to catch up with the fast-moving world economy. Such global scenarios encourage the developing countries to adopt illegal means. The newly formed relations with other countries give these countries new opportunities for corruption. However, as the countries steps into the global playing ground, their practices are monitored by other countries, which makes their corrupt practices exposed to the world at large. The pressure from international audience can force their corruption levels to fall.

Globalisation can be considered as one the factors effecting corruption but not as the only factors. Concerns like economic development, diversity and political freedoms also effect the corruption levels in countries.

In the countries which are newly exposed to globalisation, policy maker and leader should be more careful. They should take steps to reduce the opportunities for corrupt practices. The policy makers should be aware that the international anti corruption policies are not strong enough to handle corruption at the early stages of globalisation. To control the rapid growth of corruption the government, NGO's, private institutions as well as the citizens have to come together.

THE GLOBALISING CAUSES OF CORRUPTION

1) GLOBAL SITUATIONAL CAUSES

Situational causes for corruption can be motivation and opportunity. When people have reasons and chances there is a rise in corruption level. Opportunities for corruption arises when there

is lack of adequate control by the state. When the victims for corruption are easily accessible and person who wishes to do corruption is at the position of power, corruption becomes easier.

There are always fewer opportunities for corruption than street crimes. Nevertheless, globalisation have led to rise in opportunities for corruption. Globalisation can add to transnational corruption opportunities. The lack of harmonious laws around the world to tackle the corruption provides opportunities for people to find loopholes in laws of different countries to do illegal acts. Even technology provide many new opportunities for corrupt practices like easier access to money and victim.

2) RATIONALISATION, SOCIALISATION AND INSTITUTIONALISATION

To have a better understanding, we might consider few more cause other than motivation and opportunity. The mutual application of rationalisation, institutionalism and socialisation together can make corrupt practices seem normal in private organisations and government institutions. Rationalisation was introduced by “Donald Cressey” in his book “Fraud Triangle”. In it he describes rationalisation as a concept when people are convinced that the corruption which they are doing is not illegal. They believe that everybody does it, it doesn’t really hurt anyone, or the people who are affected by it deserve it. Some people also believe that law itself is corrupt as all the legal authorities are corrupt.²

Whereas institutionalisation is when corrupt practices become a part of working order of any organisation or institution. It becomes so regular that people believe that is the actual way of doing things. In socialisation when new people come to join any system and they observe how corruption prevails and further thought that corruption is a normal practice.

² Gray G.C., Insider accounts of institutional corruption: examining the social organization of unethical behaviour, *The British Journal of Criminology*, 53, 533-551, 2013

Researchers have proven that corruption can spread rapidly because of these three causes on a global scale all these causes become globalised.

3) LAW AS A CAUSE OF CORRUPTION

The law can sometimes be an unintended cause of corruption. This happens when the policies formed by the government are not productive. The poor law-making results in inaccessible, unfair, ineffective, obscure and irrational laws. Such poor law making will have two kinds of effects; first it will create motivation for the corrupt people to find loopholes in the law and gives them opportunity to do unlawful acts in a lawful way. Second, the society perceives these laws as corrupt itself. This creates unwillingness among people to follow the laws.³

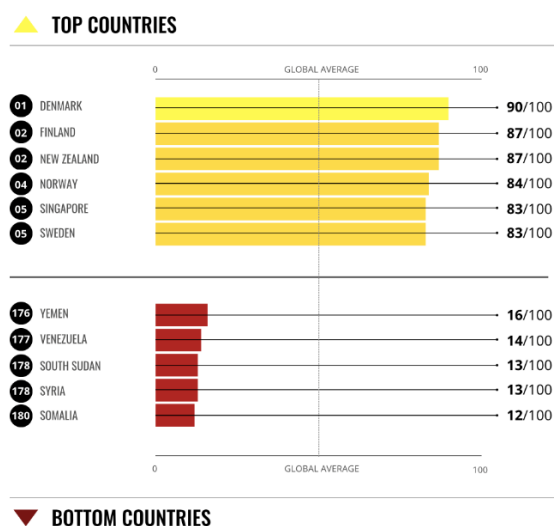
For example, the “European Union (withdrawal) act” and the post Brexit regulations in the United Kingdom had corrupted results. Also, the lack of transparency in the World Bank’s policies to combat corruption are not effective enough which further increases the corruption levels. It leads to unintentional contortions in functioning of its system, which results in instrumentalisation of corruption.⁴

If there are design failures like centralised power, higher discretion, inadequate supervision powers, or lack of enforcement of policies from the state it will result in collapse of law-making system which will further give rise to corruption. In corruption perceptions index 2022 by Transparency International countries with strong institutions and well-functioning democracies often find themselves at the top of the Index.

³Morgan R. & Clarke R.V., Legislation and unintended consequences for crime, *European Journal on Crime and Policy Research*, 12(3-4), 189–211, 2016

⁴ Pasculli L., *Corruptio Legis: Law as a Cause of Systemic Corruption, Comparative Perspectives and Remedies* also for the Post-Brexit Commonwealth proceedings of 6th Annual International Conference on Law, Regulations and Public Policy (LRPP 2017), 5-6 June 2017, Singapore. 189-197, 2017

“Denmark heads the ranking, with a score of 90. Finland and New Zealand follow closely with a score of 87. Norway (84), Singapore (83), Sweden (83), Switzerland (82), the Netherlands (80), Germany (79), Ireland (77) and Luxembourg (77) complete the top 10 this year. On the flip side, countries experiencing conflict or where basic personal and political freedoms are highly restricted tend to earn the lowest marks. This year, Somalia (12), Syria (13), and South Sudan (13) are at the bottom of the index. Venezuela (14), Yemen (16), Libya (17), North Korea (17), Haiti (17), Equatorial Guinea (17) and Burundi (17) are also in the bottom 10”.⁵



Source: Corruption Perceptions Index 2022 by Transparency International

Legal system of any country could be compared to game of sport, for instance if the referee of any sport is given arbitrary powers it would be easier to slide in corrupt decisions as legal decisions for any criminally motivated person. Same goes with the law of any country if there are loopholes in the anti-corruption policies, it would be easier for any corrupt minded people to find opportunities and motivation. If the law itself is corrupt it would be impossible for the judiciary to provide justice to the victims of corruption.

⁵ Corruption Perceptions Index 2022 by Transparency International <https://www.transparency.org/en/cpi/2022>

The same is the case with international anti-corruption policies. It is very easy to find loopholes in international laws made to combat corruption as they are not implemented in every country effectively and harmoniously. The different nature of anti-corruption policies in every country gives motivation to any person to find opportunities of corruption in other country which they don't find in their own.

TRANSNATIONAL LEGAL ORDER AND IT'S IMPACT ON CORRUPTION IN INDIA.

Transnational legal orders play a significant role in governing and regulating the world which is rapidly globalising. Such order helps in promoting cooperations and coordination between countries in formulating their national laws to provide similar nature of rights and protections to the people. Transnational legal orders aim to regulate all the nation under one umbrella legal structure.

Such laws are created and implemented by international organisations, transnational corporations, non-governmental organisations and citizens of different countries. Transnational legal orders have many effects on the corruption in the particular countries as well as on the international corruption.

For instance, Organisation for Economic Co-operation and Development (OECD)⁶ is an Anti-Bribery Convention which have played a key role in reducing corruption worldwide. It came into force in 1999. OECD have a significant impact on India's policies against corruption. India is a signatory of OECD, so it provided technical assistance to India in implementing policies of the convention. In 2013 OECD guided India in formulating the Companies act for corporate government standards with stricter provisions which give lesser opportunities for corrupt practices.

⁶ <https://www.oecd.org/>

One of the most influential anti-corruption treaties is the United Nations Convention Against Corruption (UNCAC)⁷ which is a legally binding instrument adopted by UN general assembly in 2003. India ratifies to the convention in 2011. Since then, India has taken significant number of steps to implement its provisions like, it has criminalised many corrupt practices. One of the most important steps of Indian government towards the implementation of UNCAC's policy is establishment of Central Bureau of Investigation (CBI) and the Directorate of Enforcement (ED). CBI have investigated many high-profile cases involving corruption like AgustaWestland helicopter deal and the Coal case⁸. India has also cooperated with number of countries to investigate trans-border corruption cases that includes extradition of corrupt individuals to countries. To implement the guidelines of UNCAC India have implemented Prevention of Corruption (Amendment) Act 2018⁹ which have successfully reduced corruption.

The Courts of India have also relied on many judgements of foreign nation while interpreting anti-corruption laws in India.

In State of Maharashtra v. Ashok V. Patil¹⁰ in 2005 the court held that Indian Evidence Act does not allow prosecution of any public servant for any corrupt activity just on the basis that he acquired assets disproportionate to his or her source of income. While deciding this case the court relied on judgement of supreme court of the United Kingdom.

⁷ United Nations Convention against Corruption Adopted by the UN General Assembly: 31 October 2003, by resolution 58/4 <https://www.unodc.org/unodc/en/corruption/uncac.html>

⁸ CBI v. JLD Yavatmal Energy Private Limited, CNR No. DLCT110004422019, Decided on 13-07-2023

⁹ The prevention of corruption (Amendment) Act, 2018, NO.16 of 2018

¹⁰ State Of Maharashtra vs Ashok Ramdas Patil And Anr 2022 Latest Caselaw 197 Bom

CONCLUSION

The idea presented in this research is that corruption is a very complex issue. The issue multiplies by transnational reach of corruption. While there is increased awareness about corruption in the present globalising world as people are becoming more interested to know its causes and effects, the world is still facing the problem understanding its nature. As a concept globalisation faces many perceptions as well as misconceptions. The understanding of corruption becomes a difficult task as there are lack of evidences to prove it. The secretive nature of corruption makes it difficult to understand its causes and effects.

Many non-governmental organisation doing research in rising level of corruption worldwide like Transparency International and Global Witness. The information gathered by these organisations should be analysed carefully because of complex nature of corruption. The understanding of corruption cannot be left to general public as its complicated nature could be only be understood by the people who have the best knowledge of the world as well as human beings. Corruption needs highly interdisciplinary research which involves like sociology, criminology, psychology, and law. Such research requires experts from these fields sharing ideas and options on each other's work.

Over the past 50 years, many governmental and non-governmental organisations have come up to spread awareness about corruption as well formulating different policies to tackle corruption. Such transnational legal orders help to have a harmonised anti-corruption law between nations. It is rightly said by Daniel Eriksson (Chief Executive Officer, Transparency International) that “leaders can fight corruption and promote peace all at once. Governments must open up space to include the public in decision-making – from activists and business owners to marginalised communities and young people. In democratic societies, the people can raise their voices to help root out corruption and demand a safer world for us all.”

Indian judiciary have also relied on many foreign judgements to interpret anti-corruption laws of India. These references have helped policy makers and judges to understand the transnational approach to anti-corruption policies and implement such ideas in India where the Indian laws lack interpretation.

In conclusion, globalisation has both facilitated corrupt practices and gave rise to international and transnational legal framework to tackle the rise of corruption. The policy makers need to understand the causes and impacts of the rising levels of corruption in this globalised scenario. Collaboration among governments, NGO's, private institutions, and individuals is important to stop the rapid rise of corruption and create a more transparent and accountable global society.

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